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NO. 85-1589

IN THE

Supreme Court of the United States

October Term, 1985

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Petitioner,

vs.

EDWARD M. LaPLANTE, VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN and WELLMAN RANCH COMPANY,
a dissolved Montana corporation,
Respondents.

PETITIONER'S BRIEF

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QUESTION PRESENTED FOR REVIEW

Whether a Federal District Court has diversity jurisdiction over an action prosecuted by a citizen of one state against reservation Indians located in another state.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES PAGE

TABLE OF AUTHORITIES (continued)

TABLE OF AUTHORITIES (continued)

MISCELLANEOUS AUTHORITIES

CITATIONS TO THE OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

Neither the opinion of the Federal District Court nor that of the Court of Appeals has been published. Their opinions are, however, both reprinted at pages 1a through 6a of the Appendix to the Petition for a Writ of Certiorari.

JURISDICTION OF THE SUPREME COURT

Iowa Mutual invokes the jurisdiction of this Court under 28 U.S.C., Sec. 1254 (1). Following rendition of the opinion of the Court of Appeals in this matter on September 21, 1985, Iowa Mutual filed a Petition for Rehearing and Suggestion of Appropriateness for Rehearing en Banc. That petition was denied by the Court of Appeals on December 27, 1985. Iowa Mutual filed its Petition for a Writ of Certiorari on March 24, 1986.

STATUTES WHICH THIS CASE INVOLVES

The issue in this case concerns federal diversity jurisdiction under 28 U.S.C., Sec. 1332 (a):

> "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and is between -
>
> (1) citizens of different States,"

STATEMENT OF THE CASE

This lawsuit is a declaratory judgment action which was instituted by petitioner Iowa Mutual Insurance Company in the Federal District Court of Montana on May 22, 1984. (J.A., p. 1). In April, 1982, Iowa Mutual had issued a package of insurance policies to the Wellman Ranch, a now-dissolved Montana corporation, whose owners were Ramona Wellman and her three sons, Robert Wellman, Jr.,

Craig Wellman and Terry Wellman. The package contained automobile and farm and ranch policies insuring against property damage and liability. The package also included personal umbrella policies for Rámona Wellman and her three sons.

The Wellman Ranch is located within the exterior boundaries of the Blackfeet Indian Reservation, which itself is located entirely within the State of Montana. The Wellmans are all enrolled members of the Blackfeet Indian Tribe and live on the Reservation. However, the Wellmans purchased the policies in question through an independent insurance agent in Choteau, Montana, which is approximately 45 miles south of the Blackfeet Indian Reservation.

On May 3, 1982, Edward LaPlante, an employee of the Wellman Ranch, was injured in a single-vehicle accident. At the time of the accident, Mr. LaPlante was acting within the scope of his employment. (See J.A., pp. 5-6). He was driving a semi-tractor-trailer hauling cattle from winter to summer pasture. While proceeding up a hill on U.S. Highway 89 at a point within the exterior boundaries of the Reservation, Edward LaPlante lost control of the vehicle. The semi-tractor-trailer began to slide back down the hill. The truck jack-knifed and in the process, Edward LaPlante ended up on the highway pavement.

The Wellmans did not provide workers' compensation insurance for their employees. (J.A., pp. 5-6) Whether the Wellmans as individual Indians or Wellman Ranch, as a Montana corporation, had to do so remains an open question. See 37 Opinions of the Attorney General of Montana, Opinion No. 28, at page 117.

Edward LaPlante and his wife Verla LaPlante filed a lawsuit against the Wellmans on May 3, 1983 for Edward LaPlante's personal injuries and his wife's loss of consortium. The lawsuit was filed in Blackfeet Tribal Court. Like the Wellmans, the LaPlantes are enrolled members of the Blackfeet Tribe. In fact, Edward LaPlante is the son-in-law of Ramona Wellman and brother-in-law of Robert, Craig and Terry Wellman, since his wife Verla is their sister. The

petitioner here, Iowa Mutual Insurance Company, was joined as a defendant with the Wellmans in LaPlantes' tribal court lawsuit. (Midland Claims Service, an independent adjusting firm hired by Iowa Mutual to investigate LaPlantes' claims, was sued in tribal court as well.) The Wellmans are asserted to be liable for LaPlante's personal injuries resulting from the vehicle accident, whereas Iowa Mutual is alleged to be separately liable for bad faith in handling LaPlantes' claims. (See J.A., pp. 6-8) While the legal bases for the "bad faith" claims against Iowa Mutual are as yet undetermined, the allegations in LaPlantes' pleadings in tribal court parrot language contained in the Unfair Trade Practices Act in Montana's Insurance Code, Sec. 33-18-201 of the Montana Codes Annotated. The LaPlantes seek $5,000,000.00 in exemplary damages from Iowa Mutual for these alleged transgressions.

The tribal court proceedings are still pending. Neither LaPlantes' claims against the Wellmans nor their claims against Iowa Mutual and Midland Claims Service have been resolved. Iowa Mutual and Midland Claims Service both moved to have themselves dismissed from that action, but the tribal judge has refused. (See J.A. pp. 33-44)

Iowa Mutual filed this Declaratory Judgment action under 28 U.S.C., Sec. 2201 against the Wellmans and LaPlantes seeking a determination that the LaPlantes' employment-related injury claims against the Wellmans were excluded from the scope of coverage of any of Iowa Mutual's insurance policies issued to the Wellmans. Jurisdiction was predicated on diversity under 28 U.S.C., Sec. 1332. Iowa Mutual is an Iowa corporation, with its principal place of business in DeWitt, Iowa. The LaPlantes and Wellmans are all Montana citizens.

The Wellmans dispensed with a Rule 12 Motion and instead simply filed an answer to the merits of Iowa Mutual's declaratory complaint. (J.A., pp. 45-46) The LaPlantes, however, moved to dismiss the complaint by challenging the District Court's jurisdiction. (J.A., p. 10) An existing

Ninth Circuit decision, R.J. Williams Co. vs. Fort Belknap Housing Authority, 719 F.2d 979 (1983), cert. den'd., ——— U.S. ——— , 87 L.Ed2d 612 (1985) supported LaPlante's position. R.J. Williams appears to say that if a matter is within the jurisdiction of a tribal court, thereby precluding state court jurisdiction, a federal court possesses no diversity jurisdiction over the matter, even if the amount in controversy exceeds $10,000.00 and the litigants are citizens of different states. The tribal court itself is to determine whether or not it possesses jurisdiction over the controversy.

Based on R.J. Williams, the district court granted LaPlantes' Motion to Dismiss. (See Appendix to Petition for Writ of Certiorari, page 3a.) Iowa Mutual appealed. A Ninth Circuit panel reaffirmed the validity of R.J. Williams, which the panel noted could anyway only be modified by the circuit en banc. Furthermore, R.J. Williams was now viewed as consistent with this court's subsequent decision in National Farmers Insurance Cos. vs. Crow Tribe of Indians, et al, 471 U.S. ——— , 85 L.Ed2d 818 (1985). (See App. to Pet., p. 5a.)

Iowa Mutual filed a Petition for Rehearing and Suggestion of Appropriateness of Rehearing en Banc (J.A., p. 50), to see if the entire Circuit would re-examine its R.J. Williams doctrine. The Petition was denied on December 27, 1985. (See App. to Pet., p. 6a) Iowa Mutual's Petition to this Court for Writ of Certiorari followed on March 25, 1986.

SUMMARY OF ARGUMENT

Reservation Indians are by federal law citizens of the states in which they reside. They should be treated as such for diversity purposes. Simply because the federal pre-emption doctrine bars state courts from hearing certain matters involving reservation Indians, it would not be appropriate to invoke the Erie doctrine to view federal courts as equally divested of jurisdiction in diversity cases. Such divestiture in no way furthers any perceived federal Indian policy. It is also inconsistent with the very reasons for which a federal forum has been made available for lawsuits between citizens of different states. The judgment of the Court of Appeals should therefore be reversed.

ARGUMENT

A. A litigant's status as a reservation Indian, in and of itself, does not serve to defeat diversity.

Beginning with the passage of the Judiciary Act of 1789, Congress has acted repeatedly to define the nature and extent of diversity jurisdiction. Limitations continue to exist, under the provisions of the present statute, 28 U.S.C., Sec. 1332. However, none of those limitations, either directly or by implication, serve as a basis to exclude reservation Indians from the class of litigants who may sue or be sued in a federal diversity action.

Sec. 1332 extends diversity jurisdiction to controversies between "citizens of different states." There is no question as to the "citizenship" status of a reservation Indian anymore. While the citizenship of Indians may have been open to question in the last century, in 1924 Congress declared that all Indians born in the United States are natural born American citizens. 8 U.S.C., Sec. 1401 (a) (2). As United States citizens, Indians come within the scope of the 14th Amendment of the United States Constitution:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." (Emphasis added.)

Since the Blackfeet Indian Reservation is located in Montana, the LaPlantes and Wellmans are citizens of Montana. Taking into account the prayer of LaPlantes' Tribal Court complaint, there is no question but that the matter in controversy exceeds $10,000.00. All of the requirements set by Congress to vest a federal district court with diversity jurisdiction under 28 U.S.C., Sec. 1332 are satisfied.

Given that statutory context, the question then becomes whether a judicially-announced policy serves as an adequate basis to disregard this clear Congressional authorization. As discussed below, no such justification exists.

B. The Erie doctrine does not serve as an adequate justification for a refusal to exercise diversity jurisdiction.

As the Court of Appeals has explained itself, its refusal to permit a district court to exercise diversity jurisdiction in a lawsuit against a reservation Indian stems from its interpretation of this Court's decision in Woods vs. Interstate Realty Co., 337 U.S. 535 (1949). Reliance on Woods is misplaced for a number of reasons.

In Woods, this Court agreed that a Tennessee corporation which had failed to qualify to do business in Mississippi, even though it was actually conducting business there, would be precluded from suing a citizen of Mississippi in federal district court in Mississippi, since its failure to do business in that state would foreclose a similar lawsuit in Mississippi state court. Admittedly, there is a fundamental equity about that situation. A federal forum should not be available so as to encourage, or at least countenance, a litigant's violation of state law.

Those facts serve as a basis to distinguish Woods from the presently pending litigation. Interstate Realty Co. could — and should — have qualified to do business in Mississippi. Had it done so, it would have been permitted to maintain its lawsuit in state court there. That being the case, it could have also sued in federal court on the basis of diversity jurisdiction. In other words, the plaintiff there had the ability to rectify the problem that served to preclude exercise of diversity jurisdiction.

The plaintiff here, Iowa Mutual, is presented with a completely different situation. It has not been foreclosed from suing in Montana state courts based upon anything it did or did not do — apart from passing favorably upon an application for insurance from the Wellmans, who admittedly travelled off the Reservation to obtain that insurance. What precludes Iowa Mutual from suing the LaPlantes and the Wellmans in Montana courts is the latters' status as reservation Indians. Iowa Mutual is powerless to effect that situation.

Of course, the underlying rationale behind Woods is the doctrine first announced by this Court in Erie R. Co. vs. Tompkins, 304 U.S. 64 (1938), whereby federal courts hearing diversity cases were instructed to apply state law principles in reaching their decisions. The rationale behind the Erie line of cases has been to foster uniformity in the development of state law. See Walker vs. Armco Steel Corp., 446 U.S. 740, 745 (1980). It manifests a peculiarly judicial concern, which this Court has taken the lead in expressing.

However, it is not the Erie doctrine which serves as the basis for precluding state courts from hearing lawsuits against reservation Indians. It is federal law. That federal policy can be traced to a line of more recent decisions beginning with Williams vs. Lee, 358 U.S. 217 (1959), itself, of course, a lineal descendent of a much older line of authority, dating back to Worcester vs. Georgia (U.S.) 6 Pet. 515 (1832). All of these cases stand for the proposition that the states have no inherent power to regulate the affairs of Indians on a reservation. Williams vs. Lee, supra, at page 220. Originally, this result was justified on the basis that the Indian tribes retained attributes of sovereignty inconsistent with state regulation. While that concept may have had some validity in the 19th century, in more recent times, "tribal sovereignty" has been characterized as not much more than a legal fiction. See Note, 79 Harvard Law Review 851, 853-4 (1966). This Court has itself recognized as much:

> "Finally, the trend has been away from the idea of inherent Indian sovereignty as a bar to state

jurisdiction and towards reliance on federal pre-emption. See Mescalero Apache Tribe vs. Jones, 411 U.S. 145, 36 L.Ed2d 114, 93 S.Ct. 1267. The modern cases thus tend to avoid reliance upon platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which divide the limits of state power." McClanahan vs. Arizona Tax Commission, 411 U.S. 164, 172 (1973)."

The concept of federal pre-emption of Indian affairs has nothing to do with the Erie doctrine. As described by this Court in Williams vs. Lee, supra, the refusal to permit a state court to exercise jurisdiction over a lawsuit against a reservation Indian was viewed as furthering a federal policy of encouraging "tribal governments and courts to become stronger and more highly organized." Id. at page 220. However, federal pre-emption ought not to be viewed as a justification for pre-empting federal jurisdiction itself. The concept of federal pre-emption has nothing to do with the Erie doctrine and does nothing to further the perceived goals of that doctrine, the development of uniform state law. No state policy is involved in the federal pre-emption of state jurisdiction. Poitra vs. Demarrias, 502 F.2d 23 (8th Cir. 1974), cert. denied 421 U.S. 934 (1975); American Indian Agricultural Credit vs. Fredericks, 551 F.Supp. 1020 (D.Col. 1982). Indeed, insofar as this action is concerned, it must be conceded that Montana law has not created an independent state immunity for reservation Indians; Montana continues to view itself as possessed of full civil jurisdiction over matters involving reservation Indians, unless federally pre-empted. See State ex rel. Iron Bear vs. District Court, 162 Mont. 335, 512 P.2d 1292 (1973), followed in Milbank Mutual Ins. Co. vs. Eagleman, —— Mont. ——, 705 P.2d 1117 (1985). Simply put, if the state itself has not closed the doors of its courthouses to any class of litigants, Woods ought then not to be used to bar the federal door.

If viewed within a strictly historical context, the Erie doctrine has to be looked upon as inapplicable to federal pre-emption of matters involving reservation Indians. One must keep in mind that Erie was not decided until 1938. When Worcester was decided, in the 19th century, federal courts were not as limited by solicitude for state law in diversity cases. See Swift vs. Tyson (U.S.), 16 Pet. 1 (1842). Obviously, Woods vs. Interstate Realty Co. was not within the contemplation of federal courts 100 years ago. See David Lupton's Sons Co. vs. Automobile Club, 225 U.S. 489 (1912). What was, was a recognition (1) that state authority did not extend onto Indian reservations, and (2) that the tribes themselves did not then have judicial systems to which disputes between Indians and outsiders could be referred. See Oliphant vs. Suquamish Tribe, 435 U.S. 191, 197 (1978); Williams vs. Lee, supra, 358 U.S. at 221-222. With neither state nor tribal systems available to resolve disputes between reservation Indians and outsiders, only federal courts were left. See Oliphant vs. Suquamish Tribe, supra. Within such a pre-Erie context, it is difficult to believe that federal pre-emption would serve as a basis to bar federal jurisdiction over actions between tribal members and outsiders. The Erie doctrine has not served to change federal Indian policy. It should therefore not be used as a justification for precluding federal courts from hearing disputes between citizens of one state and citizens of another who just happen to also be reservation Indians.

C. Federal policy towards reservation Indians does not serve as adequate justification for refusal to exercise diversity jurisdiction.

If the Erie doctrine cannot serve as a justification for the position taken by the Court of Appeals, the concept of federal pre-emption of Indian matters would alone have to serve as the basis for justifying a refusal to exercise diversity jurisdiction in cases involving reservation Indians. At least one federal district court has conceded as much when it recently followed the Ninth Circuit approach. Superior Oil Co. vs. Merritt, 619 F. Supp. 526 (D. Utah 1985).

This arugument starts with the premise that a perceived goal of the pre-emption doctrine is to strengthen tribal institutions by insulating them from state interference. Williams vs. Lee, supra, at page 220. It should be kept in mind that pre-emption itself has been viewed as leading to the fulfillment of a Congressional policy, which is "eventually to make all Indians full-fledged participants in American Society." Id.

In R.J. Williams, the Court of Appeals viewed the exercise of diversity jurisdiction as infringing upon tribal self-government, thereby presumptively in conflict with the perceived goal of strengthening tribal institutions. That conclusion is suspect for a number of reasons.

First, in contrast to the problem addressed in Williams vs. Lee, that of subjecting reservation Indians to the jurisdiction of state courts of general jurisdiction, the situation here is more limited. Diversity cases, by definition, would only involve litigation between reservation Indians and citizens of other states. Federal courts would not possess diversity jurisdiction over typical debt collection actions of the type that reached this court in Kennerly vs. District Court, 400 U.S. 423 (1971) and Williams vs. Lee, supra. Nor would federal courts hear domestic relations or adoption proceedings. See Fisher vs. District Court, 424 U.S. 382 (1976). In short, the impact on tribal authority or tribal institutions would be quite limited.

Secondly, no evidence exists that the exercise of diversity jurisdiction would have a negative impact on tribal institutions — specifically on tribal judicial systems. One can concede, for the sake of argument, that the ability of state courts of general jurisdiction to adjudicate all matter of controversies involving reservation Indians would, in fact, undermine tribal judicial systems. The same concession is unwarranted insofar as federal courts exercising diversity jurisdiction are concerned. Undoubtedly, the same type of argument could have been made about the impact of diversity jurisdiction on state judicial systems. History has disproved that idea. State courts have flourished even though diversity jurisdiction has been with us since the first years

of the Nation. There is no reason to suppose the tribal courts will not do likewise.

A third reason for not viewing diversity jurisdiction as negatively impacting tribal court systems is that diversity cases will, by definition, involve controversies that should, for the most part, fall outside the jurisdiction of tribal courts. As yet, the exact boundaries of that jurisdiction have not been firmly fixed. See, for example, National Farmers Union Ins. Companies vs. Crow Tribe of Indians, et al, supra. Nonetheless, this Court has already recognized that the diminished sovereignty of Indian tribes is inconsistent with the notion of tribal authority extending much beyond the internal affairs of the tribe. Montana vs. United States, 450 U.S. 544, 565-66, (1981); Oliphant vs. Suquamish Indian Tribe, supra. . Except in limited circumstances affecting the political integrity, economic security or health and welfare of a tribe, that tribe does not possess civil authority over the activities of non-members of the tribe. Montana vs. United States, supra.

Diversity cases of the type at issue here will always involve non-members. Since the exercise of tribal court jurisdiction will be questionable at best, it stands to reason that the impact on tribal authority, be it positive or negative, will be minimal. Indeed, one should not lose sight of the fact that diversity jurisdiction under 28 U.S.C., Sec. 1332 simply provides an alternative forum, the use of which is never mandated.

Even though this class of cases involves a questionable exercise of tribal jurisdiction, the Court of Appeals would nonetheless have matters first considered by tribal authorities, for them to determine whether they have jurisdiction. R.J. Williams Co., supra, 719 F2d at 983. This perceived solution itself present a number of problems.

First, it amounts to an abrogation of federal judicial responsibility.

> "The diversity jurisdiction of federal courts is even more a matter of significant federal in-

> terest because it is based on the grant of power contained in Article III, Sec. 2, of the Constitution. Its breadth must be determined at federal and not state level and it is appropriate to bow to the state limitations only when they advance some proper state policy." Sun Sales Corp. vs. Block Island Inc., 456 F2d 857, 860 (3rd Cir. 1972).

See also, Mechanical Appliance Co. vs. Castleman, 215 U.S. 437, 443 (1910). By directing that a tribal court first determine whether it possesses jurisdiction (so as then to presumably divest the federal court of diversity jurisdiction), the Court of Appeals has in effect permitted tribal authorities to determine federal jurisdiction.

In its reaffirmation of R.J. Williams in this case, the Court of Appeals asserted that this deferral concept is consistent with the subsequently decided National Farmers Insurance Companies vs. Crow Tribe of Indians, et at, supra. The Court of Appeals is wrong.

Admittedly, this court did order a non-Indian litigant in National Farmers to exhaust its tribal court remedies before mounting a challenge to tribal court jurisdiction. However, National Farmers was a federal question case under 28 U.S.C., Sec. 1331, and the specific question at issue there was the extent of a tribal court's jurisdiction over a non-member of the tribe.

However, this case approaches the problem from precisely the opposite direction. The ultimate question here is not the nature and extent of tribal court jurisdiction, but rather the extent of federal diversity jurisdiction. We do not agree that tribal jurisdiction should impact on resolution of that question, but to the extent it does, the federal judiciary must ultimately determine its own jurisdiction. Deferral is inconsistent with that responsibility.

Furthermore, the approach contemplated by the Ninth Circuit is impractical. The Court of Appeals would have the

tribal court first determine whether the matter in controversy is within its own jurisdiction. Yet, if it is a non-Indian outsider, like Iowa Mutual here, which seeks, as plaintiff, to file a federal diversity action, how is that outsider to obtain a tribal court decision on the jurisdiction question, without voluntarily submitting to that court's jurisdiction at the outset? The Court of Appeals has mandated a procedure which dictates its own result. Furthermore, what type of pleading does the Court of Appeals expect that outside plaintiff to file in tribal court?

Solicitude for native Americans should not lead to unworkable solutions.

D. Permitting the exercise of diversity jurisdiction would be consistent with its perceived historical function.

The Court of Appeals has focused its discussion on the effect which the exercise of diversity jurisdiction would have on tribal courts. R.J. Williams Co., supra, at pages 983-84. As discussed above, the concerns of the Court of Appeals are unwarranted. Equally importantly, by focusing its analysis of the diversity issue on the imagined effect on tribal authority, the Court of Appeals has taken the issue out of its appropriate context.

Diversity jurisdiction was not authorized in the United States Constitution and has not been a part of federal procedure since 1789, based upon any concern about the effect its exercise would have on state courts. Diversity jurisdiction was created for the sake of the parties themselves, not for the benefit or detriment of any court system. See Meredith vs. Winter Haven, 320 U.S. 228, 234 (1943).

> "It is the generally accepted view that diversity jurisdiction was established to provide access to a competent and impartial tribunal, free from local prejudice or influence, for the determination of controversies between citizens of different states." 1 Moore's Fed. Prac., page 701.20

See also Burgess vs. Seligman, 107 U.S. 20, 34 (1883); Pease vs. Peck, 59 U.S. 595 (1855).

Iowa Mutual filed this lawsuit for just such reasons. It has sought a competent and impartial tribunal free from local prejudice or influence to adjudicate its responsibilities under its insurance policies issued to the Wellmans. Iowa Mutual has a very real concern about the competence of the Tribal Court and it has a very real fear of local prejudice, if it has to litigate the extent of any coverage it must provide to the Wellmans, who are Blackfeet Indians, in a proceeding in their tribal court. Under Section 3 of Article I, of the Blackfeet Tribal Code, tribal judges serve at the pleasure of the Tribal Council. (See Appendix to Writ of Certiorari, page 9.) Tribal court judges need not be lawyers. In fact, the only requirements are that they have a high school education, be over 21 years of age and not be a convicted felon. (See Section 2 of Article I of the Blackfeet Tribal Code, at page 9a of the Appendix to the Petition for Writ of Certiorari.) One wonders about the competence of the Tribal Court to hear this type of case, when the Blackfeet Tribal Code does not even authorize declaratory judgment proceedings.

Whether Iowa Mutual's concerns are justified or not is not the issue. Indeed, the competence or prejudice possessed by a local tribunal would in most circumstances be difficult, if not impossible, to prove. However, diversity jurisdiction addresses not the objective manifestations of problems but rather a litigant's subjective concerns about them. Iowa Mutual has those concerns, and to the extent any sort of inquiry into them is warranted, one must concede that there is ample basis for them. To now disregard those concerns, out of solicitude for tribal institutions, is itself unjustified and wholly inconsistent with the very reasons for which the federal diversity forum was made available.

Indeed, if the ultimate goal of federal Indian policy is to make reservation Indians "full-fledged participants in American society," (Williams vs. Lee, supra), one should pause to consider whether the allowance of a federal forum would inhibit or encourage that participation. While concern about local prejudice may have diminished over the

years (at least as regards state courts), one of the principal justifications for the continued existence of diversity jurisdiction has been that it has encouraged the development of interstate commerce.

> "Citizens of different states are also citizens of the United States and they ought to be able to litigate their controversies in a tribunal of the sovereign in which they both belong. This need is especially apparent when the parties are engaged in interstate actions and when problems of conflict of law are involved. There is little doubt that the development of commerce has been aided by the existence of diversity jurisdiction, and, consequently its abolition, especially in regard to corporate usage is not justified by experience." 1 Moore's Federal Prac., page 701.33.

Once again, this lawsuit serves as an excellent example. Social and commercial interaction between reservation Indians and outsiders, both in-state and out-of-state, is to be encouraged. If those relationships are to be encouraged, it would be equally beneficial that reservation Indians be able to obtain and maintain liability insurance, so that third persons injured through their inadvertence or negligence may have a source of compensation for their injuries. Of course, there are no insurance companies located on Indian reservations in Montana. Reservation Indians have to go off the reservation to obtain that insurance. Is that insurance going to be more or less available if insurance companies know that the only forum in which policyholder disputes will be heard will be tribal courts, from which there is no appeal and which have been elsewhere characterized as "unsuited" for dealing with highly sophisticated torts? See Note 79 Harvard Law Review, supra at page 854.

In short, diversity jurisdiction remains justified. Its extension to disputes involving reservation Indians would ultimately prove beneficial, rather than harmful, to reservation Indians. Indeed, given the comparative vacuum within

which tribal courts operate, one can legitimately argue that rather than be harmed somehow, tribal courts would benefit directly from the guidance which the federal courts could provide. In effect, it would be a reverse-Erie situation. No doubt this view will be characterized as paternalistic. However, "paternalism" should be seen here as nothing more than the pejoritive "flip side" of the "diminished sovereignty" status of Indian tribes as recognized by this court. Montana vs. United States, supra, at pages 563-64; United States vs. Wheeler, 435 U.S. 313, 326 (1978).

CONCLUSION

The mere fact that a litigant is an Indian residing on a reservation should not serve to preclude exercise of diversity jurisdiction, if all of the other requirements for its exercise under 28 U.S.C., Sec. 1332 are present. The Erie doctrine does not justify a contrary result. Nor do any competing federal Indian policies — which are in fact not competing at all.

The Judgment of the Court of Appeals should be reversed with instructions that Iowa Mutual be permitted to prosecute this declaratory judgment action in the Federal District Court of Montana.

DATED this 25th day of July, 1986.

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CERTIFICATE OF SERVICE BY MAIL

I hereby certify that the foregoing PETITIONER'S BRIEF was duly served upon the respective attorneys for each of the parties entitled to service by depositing three copies in the United States Mail, prepaid, addressed to each at the last known address as shown on this page on the 25th day of July, 1986.

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